

ENTERED

December 29, 2017

David J. Bradley, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARCUS W. RAY,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. H-17-2169
	§	
UNITED PARCEL SERVICE, INC.,	§	
	§	
Defendant.	§	

ORDER

Pending is Defendant United Parcel Service, Inc.'s Motion to Dismiss (Document No. 3). Plaintiff has not filed a response to the motion, and the motion is therefore deemed unopposed pursuant to Local Rule 7.4. After carefully considering the motion and applicable law, the Court concludes that the motion should be granted for the reasons that follow.

Plaintiff alleges claims under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., for employment discrimination on the basis of race, sex, and age.¹ Such claims must be filed within ninety days of receipt of statutory notice of right to sue from the Equal Employment Opportunity Commission ("EEOC"). Taylor v. Books A Million, Inc., 296 F.3d 376, 379 (5th Cir. 2002). The ninety-day limitation period is "strictly construed." Id. at 379-80 (affirming dismissal of suit filed 91

¹ Document No. 1 (Compl.) ¶¶ 1, 6.

days after receipt of notice). "A statute of limitations may support dismissal under Rule 12(b)(6) where it is evident from the plaintiff's pleadings that the action is barred and the pleadings fail to raise some basis for tolling or the like." Jones v. Alcoa, Inc., 339 F.3d 359, 366 (5th Cir. 2003).


Plaintiff alleges that he received a notice of right to sue from the EEOC on April 10, 2017, but did not file suit until July 13, 2017, more than 90 days later.² It is therefore evident from the Complaint that the action is time-barred. Accordingly, Defendant's Motion to Dismiss (Document No. 3) is GRANTED and Plaintiff's claims are DISMISSED for failure to state a claim.

It is SO ORDERED.

A Final Judgment will be filed separately.

The Clerk will enter this order, providing a correct copy to all parties of record.

SIGNED at Houston, Texas, on this 29th day of December, 2017.


EWING WERLEIN, JR.
UNITED STATES DISTRICT JUDGE

² Id. ¶ 5.